B. The Decision of the Court Below.

The crux of the trial court's decision is a finding that appellant Evers did not really bring the suit in order to obtain for himself unsegregated public transportation, but rather for some other ulterior motive. From this finding, the court draws the legal conclusions that appellant did not suffer "legal injury" sufficient to give him standing to sue and that no "actual controversy" was presented. The finding, in turn, rests upon evidence that (1) appellant only used the transportation facilities of Memphis on one occasion; (2) appellant owns his own automobile.

At the outset, one may question whether any logic supports the findings the trial court drew from this evidence. Surely the court did not intend to suggest that in order to acquire standing to sue, appellant had either to subject himself on a regular basis to the segregated seating arrangement he found obnoxious or else submit to multiple arrests for attempting to violate state law.[1] And the court could hardly have meant to hold that owners of automobiles never have occasion to use a city's public transportation system and thus have no "interest" in it.

But even if it be conceded, *arguendo*, that these facts afford a basis for doubting appellant's motive in bringing this suit, dismissal was not proper. For, where a plaintiff adduces facts sufficient to bring him within the jurisdiction of the court and entitle him to relief, his motives in bringing the action are entirely irrelevant. *Doremus* v. *Board of Education*, 342 U. S. 429, 434-435; *Young* v. *Higbee Co.*, 324 U. S. 204, 214; *Wheeler* v. *Denver*, 229 U. S. 342, 351; *Williamson* v. *Osenton*, 232 U. S. 619.

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[1] It is even doubtful that appellant had to violate the law and subject himself to possible arrest at all in order to acquire standing to sue. *Baldwin* v. *Morgan*, 251 F. 2d 780, 787 (5th Cir., 1958); cf. *Gibson* v. *Board of Public Instruction of Dade County*, 246 F. 2d 913 (5th Cir., 1957).

The cases and principles cited by the court below support rather than negate appellant's right to maintain this action. See, e.g., *Frothingham* v. *Mellon*, 262 U. S. 447. Appellant was a member of the class, i.e., Negro citizens of Tennessee, *directly* affected by the statute in question; he did not merely suffer in "some indefinite way in common with people generally". And, appellant was not only in danger of sustaining injury as a result of the statute's enforcement, but actually had sustained such injury on one occasion. The presence of "legal" injury cannot be negated by a finding that, subjectively, appellant did not feel aggrieved by the action complained of where, as here, appellant's interest is created by specific provisions in the Constitution and laws of the United States. See *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123, 152.

This Court, in fact, has upheld the rights of action of parties far less immediately affected by government action than appellant here. See, e.g., *Truax* v. *Raich*, 239 U. S. 33; *Pierce* v. *Society of Sisters*, 268 U. S. 510; *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123, 149 ff.

Unmentioned in the opinion of the court below, but underlying its decision is the fact that appellant is not personally bearing the expenses of this lawsuit.[2] For if appellant was incurring the expenses of this action, it would be extremely difficult for anyone to suggest that he did not really want for himself the relief sought. But it is well established that the fact that others are paying the expenses of litigation does not impair a party's legal interest or standing to sue. *Wheeler* v. *Denver*, 229 U. S. 342, 351; cf. *Stark* v. *Brannan*, 82 F. Supp. 614 (D. C. 1949), affd., 185 F. 2d 871 (D. C. Cir., 1950), affd. 342 U. S. 451.[3]

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[2] Appellees strongly urged this point as a ground for dismissal both in their briefs and at the hearing (Tr. 112, 118, 119, 145, 230).

[3] This is the rule even when the agreement to pay expenses is champertous. *Burnes* v. *Scott*, 117 U. S. 582, 589.

The last factor underscores the importance of the questions here presented. Complainants in cases involving civil rights are rarely in a position to bear all of the expenses of litigation, and almost always receive pecuniary support from a legal aid organization or other source. If the principle enunciated by the court below is allowed to stand, all plaintiffs who do not pay their own expenses may be subjected to a "purity of motive" test not based on any objective criteria. One more barrier to the vindication of precious constitutional rights will have been erected.

Appellants submit that the traditional concepts of "actual controversy" and "standing to litigate" cannot be twisted to achieve this result.

Conclusion

For the foregoing reasons, it is respectfully submitted, this appeal should be granted and the judgment of the court below should be reviewed and reversed by this Court.

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APPENDIX I

Opinion of the Court Below

PER CURIAM. This is a civil action brought by O. Z. Evers, a colored citizen, against the Mayor and Commissioners of the City of Memphis, individually and in their official capacities; the Chief of Police of Memphis, both individually and officially; two police officers of Memphis; a named employee of the Memphis Street Railway Company, operator of one of its buses; and the "Memphis Street and Railway Company." The complaint is based upon the alleged violation of the rights of plaintiff and other citizens similarly situated, as guaranteed by the Fourteenth Amendment of the Constitution of the United States, in the enforcement by defendants of Sections 1704-1709, Title 65, Tennessee Code Annotated, 1955, requiring the separation of white and colored persons on street-car lines operated in Tennessee.

The charge is made that the aforementioned Tennessee Code sections are unconstitutional, in view of the decision of the Supreme Court of the United States in *Gayle* v. *Browder*, 352 U. S. 903, affirming the decision of a three-judge district court sitting in the Middle District of Alabama in 1956 (reported in 142 Fed. Supp. 707), generally known as the "Montgomery Bus Case". The plaintiff insists that the doctrine of *Plessy* v. *Ferguson*, 163 U. S. 567, has been entirely repudiated by the holding and pronouncements of the highest court in *Brown* v. *Board of Education*, 347 U. S. 483; *Mayor and City Council of Baltimore* v. *Dawson*, 350 U. S. 877; and *Holmes* v. *Atlanta*, 350 U. S. 879.

Plaintiff avers that, on April 26, 1956, he was ordered by the bus operator to move from a front seat which he occupied to the rear of the bus. He refused and, later, two Memphis Police officers who, apparently, had been summoned by the bus operator, ordered him to obey, get off the bus, or be arrested. Whereupon, he left the car. He

pleads that he and those similarly situated are threatened with irreparable injury by reason of the acts of defendants of which complaint is made, and that there is no other plain, adequate and complete remedy other than by "this suit for an injunction."

The prayer of the complaint asks that a three-judge court, as provided for by Title 28, section 2284, United States Code, be convened; that an injunction restraining defendants from enforcing the sections of the Tennessee Code cited above be granted; and that defendants be restrained from enforcing "any and all customs, practices, and usages pursuant to which plaintiff or other persons similarly situated are segregated in the street cars of the Memphis Street and Railway Company, on the ground that such statutes are null and void and in violation of the Fourteenth Amendment to the Constitution of the United States." Declaratory judgment, pursuant to sections 2201 and 2202 of Title 28, United States Code, declaring and defining "the legal rights of the parties in relation to the subject matter of this controversy" is prayed.

Separate answers of the Mayor and City Commissioners of Memphis, of the Memphis Street Railway Company and its bus operator, and of two substituted police officers for those officers named in the petition (who had nothing to do with the matter) were filed; a three-judge court was lawfully designated; and the case came on for hearing before that court on January 6, 1958.

Immediately prior to the hearing, the defendants filed a motion for continuance on the ground that the five-day notice required by statute (28 U. S. C., section 2284) had not been given by the Clerk of the Court to the Governor and the Attorney General of Tennessee. At the hearing, it was insisted that the assembled three-judge court had no jurisdiction to proceed. Technically, there was merit in this position; but, inasmuch as the pendency of the suit and of the date set for hearing was a matter of common knowledge

and must have been known by the State officials, the court deemed it inadvisable to delay action beyond a time sufficient to permit the State of Tennessee to intervene. It was ordered, therefore, that the hearing proceed, that evidence be introduced and recorded and arguments heard, with the understanding that after appropriate notice had been given the Governor and the Attorney General of Tennessee the State could intervene and be heard; or, if the State so elected, all evidence received at the January 6 hearing should be expunged and the proceeding started *de novo*. This course was pursued by the court for the added reason that the counsel who took the lead for plaintiff had traveled from New York to attend the hearing and all parties except the State were represented by counsel in attendance. The further hearing was set for January 11 to afford opportunity for compliance with the provision of the statute requiring five days notice.

On January 11, 1958, the Solicitor General and the Assistant Attorney General of Tennessee appeared on behalf of the State and adopted all defenses made by the defendant officials of Memphis. When offered the opportunity, they expressed no desire to present additional proof, but did file briefs. Indeed, the second point made in the State's brief is, we think, determinative of the present case; that is to say that this action should be dismissed for lack of an actual controversy and of a real interest in the suit on the part of the plaintiff. The Federal Declaratory Judgment Act provides: "In a case of *actual controversy* within its jurisdiction, except with respect to Federal Taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations *of any interested party* seeking such declaration, whether or not future relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such." (Emphasis supplied) Title 28, section 2201, U. S. C.

In *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U. S. 270, 272, 273, the Supreme Court asserted that a district court is without power to grant declaratory relief unless an actual controversy exists. The Supreme Court said, further, that the difference between an abstract question and a controversy contemplated by the Declaratory Judgment Act is necessarily one of degree; that it would be difficult—if possible—to fashion a precise test; and that the question in each case is basically whether the facts alleged, under all the circumstances, show that there is a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

The Court of Appeals for the Sixth Circuit, speaking through Judge Shackelford Miller, Jr., in *Walker* v. *Felmont Oil Corporation*, 240 F. (2d) 912, 916 (C. A. 6), said: "Although jurisdiction may exist, it does not follow that it must be exercised. The Declaratory Judgment Act confers a discretion on the court rather than an absolute right upon the litigant. *Public Service Commission of Utah* v. *Wycoff Co.*, 344 U. S. 237, 241, 243, 73 S. Ct. 236, 97 L. Ed. 291; *Brillhart* v. *Excess Insurance Co.*, 316 U. S. 491, 494, 62 S. Ct. 1173, 86 L. Ed. 1620; *Great Lakes Dredge & Dock Co.* v. *Huffman*, 319 U. S. 293, 63 S. Ct. 1070, 87 L. Ed. 1407. Federal courts should exercise their discretionary power with the proper regard for the rightful independence of state governments in carrying out their domestic policy. Conflicts in the interpretation of state law, dangerous to the success of state policies, are almost certain to result from the intervention of lower federal courts. *Commonwealth of Pennsylvania* v. *Williams*, 294 U. S. 176, 185, 55 S. Ct. 380, 79 L. Ed. 841; *Burford* v. *Sun Oil Co.*, 319 U. S. 315, 318, 334, 63 S. Ct. 1098, 87 L. Ed. 1424. A federal court in a declaratory judgment suit should give strong consideration to the public interest involved in the avoidance of needless friction with state policies. *Railroad Commission of Texas* v. *Pullman Co.*, 312 U. S. 496, 500, 61 S. Ct.

643, 85 L. Ed. 971; *Alabama Public Service Commission* v. *Southern Railway Co.*, 341 U. S. 341, 350, 71 S. Ct. 762, 95 L. Ed. 1002."

Moreover, the Court of Appeals for this Circuit, in an opinion by Judge Potter Stewart, states: "* * * It is well settled, however, that accepted principles governing equitable and declaratory relief are no less applicable where such relief is sought under the Civil Rights Act. *Giles* v. *Harris*, 1903, 189 U. S. 475, 486, 23 S. Ct. 639, 47 L. Ed. 909; *Douglas* v. *City of Jeannette*, 1943, 319 U. S. 157, 63 S. Ct. 877, 87 L. Ed. 1324. Federal courts have been chary of granting declaratory or equitable relief in an area of possible friction between federal and state jurisdictions. (Citing cases)." *Williams, et al.* v. *Dalton, et al.*, 231 F. (2d) 646, 648 (C. A. 6).

The Court of Appeals for the Seventh Circuit, in *Ex-Cell-O Corporation* v. *City of Chicago*, 115 F. (2d) 627, held that a party attacking the validity of a municipal ordinance had failed to meet the required standard of showing, not only that the ordinance was invalid, but also that he had sustained or was in immediate danger of sustaining some direct injury as the result of its enforcement; not merely that he had suffered in some indefinite way in common with people generally. The court quoted from the opinion of the Supreme Court in *Massachusetts* v. *Mellon*, 262 U. S. 447. See also *Federation of Labor* v. *McAdory*, 325 U. S. 450, 463, where it was said: "Only those to whom a statute applies and who are adversely affected by it can draw in question its constitutional validity in a declaratory judgment proceeding."

In the absence of a clear showing of an actual controversy and that he is genuinely being deprived of a constitutional right, no citizen should be privileged to obtain from a federal court a judgment which not only declares invalid the statutory law of a sovereign state, but also enjoins its enforcement.

In the instant case, the plaintiff, a colored postal clerk who had previously been a police officer in Cook County, Illinois, recently came to Memphis where he worked in the Post Office. On April 26, 1956, he boarded a Memphis Street Railway bus and took a front seat immediately behind the driver, who directed him to sit in the rear of the bus, stating that the law required it because of plaintiff's color. He refused to comply. The bus driver proceeded to a fire station, which he entered and where he remained for some ten minutes according to the plaintiff. When the bus reached another corner on its route, two police officers boarded the bus and asked what was wrong. The driver told them that the plaintiff and another man accompanying him had refused to move to the rear. The officers ordered plaintiff to go to the back of the bus, get off, or be arrested. He left the bus.

Plaintiff testified that he was coming down town to the Post Office and had ridden in an automobile owned by a friend whose name he could not recall to the point where he boarded the bus. The bus which he boarded was not headed directly toward the Post Office in the business district of the city, but in a different direction on a circuitous route which required several miles' extra travel to reach the down-town area. He denied that in getting on the bus on the particular day he was laying grounds for this suit; but, on cross-examination by the City Attorney, he admitted that *he had never previously ridden a bus in Memphis and that he had not ridden one since the incident in question.*

Plaintiff admitted further that he is the owner of an automobile at the present time and that he owned one at the time of the particular incident—the only occasion on which he had ridden a bus. It is thus obvious that he was not a regular or even an occasional user of bus transportation; that in reality he boarded the bus for the purpose of instituting this litigation; and that he is not in the position of representative of a class of colored citizens

who do use the buses in Memphis as a means of transportation. This is, therefore, not a case involving an actual controversy. Moreover, plaintiff has not suffered the irreparable injury necessary to justify the issuance of an injunction. In fact, his own testimony shows that he has not been injured at all.

Accordingly, the action is dismissed.

/s/ JOHN D. MARTIN,
United States Circuit Judge.

/s/ MARION S. BOYD,
United States District Judge.

/s/ WILLIAM E. MILLER,
United States District Judge.

APPENDIX II

Statutes Involved

Equipment and Operating of Street and Interurban Railroads

Title 65, Section 1704, Tennessee Code (1955). Portions of Car to Be Set Apart and Designated for Each Race.—All persons, companies, or corporations operating any street car line in the state are required, where white and colored passengers are carried or transported in the same car or cars, to set apart and designate in each car or coach, so operated, a portion thereof or certain seats therein to be occupied by white passengers, and a portion thereof or certain seats therein to be occupied by colored passengers; but nothing in sections 65-1704-65-1709 shall be construed to apply to nurses attending children or other helpless persons of the other race. (Acts 1905, ch. 150, section 1; Shan., section 3079a1; Code 1932, section 5527.)

Title 65, Section 1705, Tennessee Code (1955). Printed Sign to Indicate Cars or Parts of Cars for Each Race.—Large printed or painted signs shall be kept in a conspicuous place in the car or cars, or the parts thereof set apart or designated for the different races, on which shall be printed or painted, if set apart or designated for the white people, and it being a car so designated or set apart, "This car for white people." If a part of a car is so designated, then this sign, "This part of car for white people." If set apart or designated for the colored race, this sign to be displayed in a conspicuous place as follows, "This car for the colored race." If any part of a car is set apart or designated for said race, then this sign as follows, "This part of the car for the colored race." (Acts 1905, ch. 1950, section 1; Shan., section 3079a2; Code 1932, section 5528.)

Title, 65, Section 1706, Tennessee Code (1955). Conductor May Increase or Diminish Space for Either Race, or Require Change of Seats.—The Conductor or other

person in charge of any car or coach so operated upon any street car line shall have the right at any time, when in his judgment it may be necessary or proper for the comfort or convenience of passengers so to do, to change the said designation so as to increase or decrease the amount of space or seats set apart for either race, or he may require any passenger to change his seat when or so often as the change in the passengers may make such change necessary. (Acts 1905, ch. 150, section 2; Shan., section 3079a3; Code 1932, section 5529.)

Title 65, Section 1707, Tennessee Code (1955). Refusal of Passengers to Take Seats Assigned by Conductor and Designated for Their Race or Leave Car-Penalty.—All passengers on any street car line shall be required to take the seats assigned to them, and any person refusing so to do shall leave the car or remaining upon the car shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not to exceed twenty-five dollars ($25.00); provided, no conductor shall assign any person or passenger to a seat except those designated or set apart for the race to which said passenger belongs. (Acts 1905, ch. 150, section 3; Shan., section 3079a4; Code 1932, section 5530.)

Title 65, Section 1708, Tennessee Code (1955). Failure to Set Apart Portions of Car for Each Race-Penalty.—Any person, company, or corporation failing to set apart or designate separate portions of the cars operated for the separate accommodation of the white and colored passengers, as provided by sections 65-1704-65-1709, shall be guilty of a misdemeanor and fined in any sum not to exceed twenty-five dollars ($25.00). (Acts 1905, ch. 150, section 4; Shan., section 3079a5; Code 1932, section 5531.)

Title 65, Section 1709, Tennessee Code (1955). Special Cars for Exclusive Accommodation of Either Race.—Nothing in sections 65-1704—65-1709 shall be construed to prevent the running of extra or special cars for the exclusive accommodation of either white or colored passengers, if the regular cars are operated as required by sections 65-1704—65-1709. (Acts 1905, ch. 150, section 5; Shan., section 3079a6; Code 1932, section 5532.)